IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 9 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SABIARALI GOHARALI SAIYED

Versus

JAGDISHKUMAR B INAMDAR

Appearance:

1. Civil Revision Application No. 9 of 1991

MR ASHOK K PADIA for Petitioner No. 1

MR RASHEED QURESHI for Petitioner No. 1

MR SUNIL K SHAH for Respondent No. 1-4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/07/2001

C.A.V. JUDGEMENT

This revision under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (`the Act' for short) is filed against the concurrent

judgment and decree dated 1-10-1990 passed by the learned Assistant Judge, Panchmahals at Godhra in Regular Civil Appeal No.115 of 1984 confirming the judgment and decree of eviction dated 16-7-1984 passed by the learned Civil Judge (J.D.) Dahod in Regular Civil Suit No.109 of 1982.

2. Brief facts of the case are as under:

2.1 According to plaintiffs, they are the owners of suit property which was let out to the defendant on a monthly rent of Rs.6.50 as standard rent fixed by the Court in a decree passed in Regular Civil Suit No.125 of 1970. The defendant paid rent upto 31-12-1975 and was in arrears of rent for six months, i.e. from 1-1-1980 to 30-6-1982 amounting to Rs.195/- and since he failed and neglected to pay the same, notice was issued to him. Though it was duly served, he did not pay the arrears of rent as demanded vide suit notice nor did he raise the dispute of standard rent within stipulated period and, hence, plaintiffs filed a suit for recovering possession of the suit premises and also on ground of arrears of rent.

2.2 The defendant filed his written statement at Ex.14 contenting that monthly rent of Rs.6.50 was not a standard rent fixed by the Court as the standard rent which has been fixed by the Court is a consent decree under duress of eviction. It was further contended that plaintiffs were to recover Rs.6/- towards rent and 50 paise towards municipal tax and he was not a tenant in arrears as alleged by the plaintiffs in suit notice. According to him, he was always ready and willing to pay the rent to the plaintiffs-landlords, but they were telling him that they will collect the rent collectively. Even after receiving the suit notice, he and his friend went to the plaintiffs to tender the amount of Rs.195/- for the period upto 30-6-1980 as rent, but plaintiffs did not accept the same under protest that they were not in need of the same and that the defendant need not worry about the suit notice. It was the further say of the defendant that plaintiffs had asked him to pay the rent Rs.9/- per month instead of Rs.6.50.

2.3 After giving opportunity and after hearing the learned advocates appearing for the respective parties, learned trial Judge decreed the suit in favour of the plaintiffs on 9-8-1984. Against that, present petitioner-original tenant preferred Regular Civil Appeal No.115 of 1984 in the Court of District Judge, Panchmahals at Godhra. However, the said appeal was dismissed vide judgment and decree dated 1-10-1990. By

the said judgment and decree, he has confirmed the judgment and decree passed by the trial Court. It is against these two concurrent judgments and decrees of the Courts below, this Civil Revision Application is filed.

3. I have heard learned counsel for the petitioner, Mr.Padia, who appeared in place of learned counsel Mr.R.A.Qureshi and also learned counsel for the respondent, Mr.Sunil K.Shah at length. I have also gone through the judgments of the Courts below.

4. Mr.Padia has mainly argued that there is a genuine dispute regarding standard rent of the suit premises and it was sought to be fixed in the earlier suit and the same was obtained by the landlord by misrepresentation and coercion and on the basis of consent purshis Ex.36 filed in Regular Civil Suit No.125 of 1970 and, therefore, it is not a standard rent fixed by the Court in the eye of law. It is further argued that in the previous suit, Court was not justified in fixing the standard rent at Rs.6.50 per month on the basis that there was increase in tax and repairs were to be carried out and considering all the material before the Court in the earlier suit, the Court ought to have fixed the standard rent, but it has failed in doing so and, hence, the impugned decree of eviction is void and deserves to be set aside.

5. Learned counsel for the respondents-original landlords, Mr.Sunil K. Shah, has argued that the standard rent fixed by the Court in Regular Civil Suit No.125 of 1970 is legal, valid, according to law and is binding on both the parties. According to him, the rent fixed by the Court in the above suit is not a collusive standard rent. It was a substantive suit filed by the present respondents-original plaintiffs into the Court for substantial prayer for possession wherein ultimately settlements were arrived at between the parties and consent purshis Ex.36 was submitted by the parties on various aspects and, therefore, suit was disposed of as per the consent terms purshis Ex.36 and present appellant-original tenant had acted upon the above settlement and paid rent to the present respondents till 31-12-1979 and, therefore, it is not a standard rent fixed by the Court under duress and coercion on the same day i.e. the day on which the suit was filed. Along with the suit, consent terms purshis for fixing the standard rent was submitted by the parties and Court has passed the order. But this has been fixed by the Court on a substantial suit that too, not on the same day and grounds are also mentioned in the consent terms purshis

for fixing the standard rent of Rs.6.50. It was argued that it is a case of tenant in arrears and both the Courts below have held that present appellant-original tenant is a tenant in arrears for more than six months and decree has been passed to that effect and it is a concurrent findings of both the Courts on the basis of facts and this Court cannot interfere with those findings given by both the Courts.

6. The only point which requires consideration by this Court is whether present appellant-original tenant is a tenant in arrears for more than six months and also whether the rent of Rs.6.50/- per month fixed by the Court below in Regular Civil Suit No.125 of 1970 is a standard rent in the eye of law or not?

7. I have heard learned counsel for the parties at length on the above points. Learned counsel for the petitioner has drawn my attention towards the case of Patel Valmik Himatlal & Ors. Vs. Patel Mohanlal Muljibhai (Dead) through L.Rs., 1998(2) G.L.H. 736. He has relied upon para 6 of the reported judgment which is as under:

> "The powers under S.29(2) are revisional powers with which the High Court is clothed. It empowers the High court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of evidence cannot be a ground for exercise of the revisional jurisdiction."

8. It is not in dispute that prior to filing of this suit, the landlords have filed Regular Civil Suit No.125 of 1970 against the present petitioner which is not for fixing the standard rent but a substantial suit on various grounds including the ground of arrears. In that suit, present petitioner-original tenant had raised the contention regarding standard rent and at the end of trial, matter was settled between the parties on all aspects and prayer in respect of possession has been forgiven by the present respondents-landlords and standard rent was fixed by the Court below on the basis of purshis Ex.36 and the averments made in it justifying the standard rent. Keeping in mind the above aspects, both the Courts below have come to the conclusion that it is not a standard rent which has been fixed by the Court

below without applying its mind or it is not a collusive standard rent for which standard rent application has been submitted along with the consent term purshis and with the appearance of respondent, on the same day, whole proceedings have come to an end. In short, it is not a collusive standard rent but standard rent which has been fixed by the Court below after applying its mind and, therefore, I cannot come to the conclusion that the standard rent which has been fixed by the Court below in earlier suit is not a standard rent in the eye of law. Over and above, it is a concurrent findings of both the Courts on this issue and no convincing argument has been advanced by the learned counsel for the petitioner so as to come to any different conclusion especially when it has been fixed since long and same has been acted upon by the parties and it has not been challenged till the written statement was filed by the present petitioner-original defendant in Regular Civil Suit No.109 of 1982.

9. A contention was raised by learned counsel for the petitioner that out of Rs.6.50 fixed by the Court below, Rs.6.00 was towards standard rent and paise 50 was towards municipal tax. Relying upon the case of Naniben, D/o Dayalbhai Morarbhai Vs. Vidhyaben Ambalal Mistry, 1987(1) G.L.R. page 352, he has argued that in that reported case, as tenant was liable to pay education cess annually, Court came to the conclusion that he is not a monthly tenant but an yearly tenant.

10. There cannot be any dispute regarding the principles laid down by the Apex Court as well as by this Court in the above referred judgments. But here in the present case, petitioner has failed to establish that out of Rs.6.50, Rs.6.00 is the monthly rent and Paise 50 is towards municipal tax and both the Courts below have come to the definite conclusion that Rs.6.50 is the standard rent. In short, it has been challenged by the petitioner-tenant for the first time after a period of 12-13 years and that too, it has been fixed by the Court below after considering all aspects of the matter and, therefore, in my opinion, the view taken by the Courts below that Rs.6.50 per month is a standard rent fixed by the Court below in the previous suit and it is not a collusive standard rent is correct. In view thereof, the judgments relied upon by the learned counsel for the petitioner will not be applicable in this case.

11. Now the question to be decided is whether the present petitioner-original tenant is a tenant in arrears for more than six months or not. For that, Mr.Padia has

relied upon the case of Rasiklal J. Shukla (Decd.) through his heirs Vs. Bharat V. Dave (Minor) through natural guardian V.M.Dave, 2000(3) G.L.R., 2137.

12. This question has been discussed at length by both the Courts below on merits by giving cogent reasons and it is a finding of facts by both the Courts. I am aware that even if two view are possible, then also, this Court should not interfere only on that ground. I have gone through the findings of both the Courts on the point of arrears of rent and it appears that both the Courts below have dealt with this point very carefully after minutely considering the evidence on record by holding that present petitioner-original tenant was in arrears of rent from 1-1-1980 to 30-6-1982 amounting to Rs.195/- for which, notice was also served upon him. However, he has not paid the amount of arrears within one month of receiving the suit notice nor has he raised the dispute of standard rent within the stipulated time. He has raised the dispute of standard rent for the first time in the written statement in the Court below stating that the standard rent fixed in the earlier case based on consent term purshis was vitiated on account of fraud, misrepresentation or coercion. It is stated by the present petitioner-original tenant that after receiving the suit notice, he went to the house of plaintiffs for paying the arrears of rent along with his friend, but they have not accepted the same stating that as and when they require, they will ask for the same. But it is to be noted that said friend has not been examined by the petitioner. Moreover, he has failed to establish that he has paid the amount of arrears of rent within stipulated period. As I have stated earlier, both the Courts below have come to the conclusion by way of concurrent findings that Rs.6.50 fixed by the Court below as a standard rent is just, legal and proper and petitioner-tenant has not paid the same within stipulated time even after serving legal notice upon him. He has not raised any dispute regarding the standard rent within stipulated time and when it has been established and findings have been given by both the Courts below that petitioner-tenant is in arrears of rent for more than six months, then admittedly his case falls under Sec.12(3)(a) of the Act and not under Sec.12(3)(b) as argued by learned counsel for the petitioner and, therefore, both the Courts below have rightly held the same. When petitioner's case is not falling under Sec.12(3)(b) of the Act, he will not be entitled to any benefit out of the above judgment and hence, this revision application is required to be rejected.

13. Mr.Padia has requested this court that looking to the facts and circumstances of the case and as petitioner being a retired railway employee, some time may be given to him to vacate the premises. Having regard to the facts and circumstances of the case, the petitioner being a retired railway employee, if six months' time is granted to vacate the premises, it will meet the ends of justice.

14. In the result, this Civil Revision Application is rejected. Rule is discharged. Ad-interim relief is hereby vacated. Petitioner is directed to hand over the vacant and peaceful possession of the premises in question to the respondent on or before 31st January, 2002.

(R.P.DHOLAKIA,J.)
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